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Attorney for Plaintiff
BRIAN SETENCICH

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BRIAN SETENCICH

Plaintiff,

vs.

THE AMERICAN RED CROSS, a non-profit
corporation; STEVE BROWN; ROBERT
BROWNING; and DOES 1 through 30, inclusive,

Defendants.

Case No. C 07-03688 SBA

**[PROPOSED] ORDER ON PLAINTIFF'S
MOTION TO COMPEL DEFENDANT
STEVE BROWN'S FURTHER RESPONSES
TO PLAINTIFF'S REQUEST FOR
ADMISSIONS, SET ONE**

Date: June 3, 2008

Time: 1:00 p.m.

Ctrm: 3

Judge: Hon. Sandra Brown Armstrong

I.

INTRODUCTION

Plaintiff Brian Setencich ("Setencich") served Plaintiff's Amended Request for Admissions, Set One on Defendant Steve Brown ("Brown") on February 19, 2008. After granting defense counsel the professional courtesy of an extension until March 25, 2008, Defendant Brown served late discovery responses where Brown either objected to the request or re-framed the request so that he could evade responding to the request propounded by Setencich.

Setencich contends this discovery will save much time and expense since it goes to the heart of plaintiff's claims. In particular, the articulated business reason by defendant for not hiring Setencich was his felony conviction for tax evasion in 2001. The requests for admissions are directed to determine if the alleged business reason is pretextual, which is probative of a

1 discriminatory animus. The Court finds Setencich contention to be meritful and as a result orders
2 Defendant Brown to provide further responses to the discovery.

3 II.

4 LEGAL ANALYSIS

5 A. Request for Admissions

6 Defendant Brown's responses are filled with blanket objections which this Court finds lacks
7 merit. Request for Admissions may call for the admissions of any of the following: a statement of
8 fact, an opinion on a matter of fact, and/or the application of law to fact. (FRCP 36(a).) When
9 served with request for admissions, the responding party may respond with an answer, which may be
10 either an express admission, a denial or an explanation of why the responding party cannot admit or
11 deny. (FRCP 36(a).) If a party to whom a request for admissions has been directed does not serve a
12 timely response the requested matter is deemed admitted. (FRCP 36(a).) Here, Defendant Brown
13 did not ensure the admission responses were received by Setencich's attorney by March 25, 2008.
14 However, the Court finds Defendant Brown was inadvertent in not responding timely and therefore
15 Defendant must seek Court approval to be relieved of his inadvertence.

16 When the responding party qualifies a response or denies only part of the requested matter,
17 the responding party must specify which part of the requested matter is true and qualify or deny the
18 remainder. (*Holmgren v. State Farm Mutual Auto Ins. Co.* 976 F.2d 573, 579-580 (9th Circuit
19 1992).) Here, Defendant Brown rather than admitting or denying the admission request, rephrases
20 them which is inappropriate.

21 III.

22 DISPUTED DISCOVERY

23 A. PLAINTIFF'S AMENDED REQUEST FOR ADMISSIONS FROM DEFENDANT 24 STEVE BROWN, SET ONE:

25 1. Request for Admission No. 1:

26 Defendant Brown's re-framing of the request is inappropriate and allows him to evade
27 responding to the request. Plaintiff specifically asked Brown to admit that he recommended ARC to
28 hire individuals that had been convicted of a felony. Plaintiff did not ask whether or not Brown

1 knew the individual had a felony at the time of the recommendation and did not narrow the request
2 to only involve the Southern California region of the Blood Services Department of ARC. As
3 testified to by Brown at his deposition on April 15, 2008, ARC is one entity, Blood Services is a
4 Department, and Southern California is a region.

5 As to the objections, although the request is not in perfect grammar, it is clear what is being
6 requested. The overbroad objection is also without merit since it is limited to a six year time frame.
7 Therefore, Defendant Brown is ordered to answer Request No 1 with an admit or deny.

8 **2. Request for Admission No. 3:**

9 Defendant Brown's re-framing of the request is inappropriate. The request is whether
10 or not Brown interviewed Setencich, not whether or not Brown met with Setencich. Interview is a
11 clear and concise term. Brown is an officer of ARC who is involved in hiring personnel and
12 therefore the objection of vague and ambiguous is without merit.

13 **3. Request for Admission No. 4:**

14 The request is not ambiguous. The request does not request information about
15 background checks. The policies Defendant has produced do not respond to this request of whether
16 ARC's written policies prohibited the hire of candidates with felony convictions during the time
17 period Plaintiff applied for work.

18 **IV.**

19 **CONCLUSION**

20 The Court, having considered the pleadings submitted by the parties and oral argument from
21 counsel, and good cause appearing therefor,

22 IT IS HEREBY ORDERED as follows:

23 1. The motion is GRANTED that Defendant Brown to serve further responses to
24 Plaintiff's Request for Admissions, Set One, admitting or denying Request No. 1, 3, and 4.

25 DATED: _____, 2008

26 _____
27 Honorable Sandra Brown Armstrong
28 UNITED STATES DISTRICT COURT JUDGE

PROOF OF SERVICE

CASE: *Brian Setencich v. The American Red Cross, et al.*; United States District Court of California, Northern District

CASE NO: **C 07-03688 SBA**

I, the undersigned, declare I am a citizen of the United States and am employed in the County of Sacramento, State of California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 331 J Street, Suite 200, Sacramento, CA 95814.

I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. On the date indicated below, I served the following documents by:

to be served on the party(ies) or their (its) attorney(s) of record in this action:

☐ Via Mail: I caused each envelope (with postage affixed thereto) to be placed in the U.S. mail at Sacramento, California.

☐ Via **CERTIFIED** Mail: I caused each envelope (with postage affixed thereto) to be placed in the U.S. mail at Sacramento, California.

☒ Via Personal Service: I instructed each document to be hand-delivered via **HAND DELIVERY** via **ATTORNEY'S DIVERSIFIED SERVICES** to the address listed below.

☐ Via Overnight Courier: I caused each envelope to be delivered via overnight mail by **FEDERAL EXPRESS**.

☐ Via **FACSIMILE**: I instructed such to be transmitted via facsimile to the office(s) list below.

DOCUMENTS SERVED: [PROPOSED] ORDER ON PLAINTIFF'S MOTION TO COMPEL DEFENDANT STEVE BROWN'S FURTHER RESPONSES TO PLAINTIFF'S REQUEST FOR ADMISSIONS, SET ONE

ADDRESSED TO :

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I declare under penalty of perjury that the foregoing is true and correct. Executed on April 29, 2008, at Sacramento, California.


Camille Rasmussen